

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emma Kaisla	Team: Squad #15	CCRB Case #: 202002458	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/23/2020 2:30 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 5/4/2022	Precinct: 34		
Date/Time CV Reported Tue, 03/31/2020 11:25 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 03/31/2020 11:25 AM		
Complainant/Victim	Type	Home Address			
Subject Officer(s)	Shield	TaxID	Command		
1. POM Carlos Santiago	07991	939418	034 PCT		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Matthew Ragni	14105	968078	034 PCT		
2. SGT Majer Saleh	02402	929110	034 PCT		
3. POM Victor Yupa	23804	955685	034 PCT		
Officer(s)	Allegation	Investigator Recommendation			
A . POM Carlos Santiago	Abuse: Police Officer Carlos Santiago stopped § 87(2)(b)				
B . POM Carlos Santiago	Abuse: Police Officer Carlos Santiago threatened to arrest § 87(2)(b)				

Case Summary

On March 31, 2020, § 87(2)(b) filed this complaint with the CCRB via the online complaint form.

On March 23, 2020 § 87(2)(b) went to § 87(2)(b) to pick up his daughter for visitation. When the mother refused to release his daughter to him, § 87(2)(b) called the police. Police Officer Carlos Santiago and Police Officer Matthew Ragni responded and went with § 87(2)(b) to the § 87(2)(b) floor of the building, where § 87(2)(b) daughter lived. As the incident progressed, Sergeant Majer Saleh and Police Officer Victor Yupa also arrived. The child's mother, who was not physically present initially, also returned to the building.

Sgt. Saleh and PO Yupa went upstairs and spoke to the daughter and her mother while PO Santiago and PO Ragni waited with § 87(2)(b) in the lobby of the building. While in the lobby, PO Santiago told § 87(2)(b) he was not free to leave and threatened to arrest him (**Allegation A: Abuse of Authority, § 87(2)(g)** **Allegation B: Abuse of Authority, § 87(2)(g)**

There is BWC footage of the incident from PO Santiago, PO Ragni, PO Saleh, and PO Yupa (**Board Review 08-15**, transcribed in **Board Review 16**). § 87(2)(b) also recorded the incident on his cellphone (**Board Review 03-04**, transcribed in **Board Review 05**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Carlos Santiago stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Carlos Santiago threatened to arrest

§ 87(2)(b)

§ 87(2)(b) provided a telephone statement on April 7, 2020 and a sworn statement on April 15, 2020 (**Board Reviews 01-02**). There were no additional civilian witnesses.

It is undisputed that prior to the arrival of Sgt. Saleh and PO Yupa, § 87(2)(b) went to the § 87(2)(b) floor with PO Santiago and PO Ragni to check on his daughter. They then returned downstairs and waited for a supervisor to arrive. When Sgt. Saleh and PO Yupa arrived and went upstairs, § 87(2)(b) approached the stairs and attempted to follow. PO Santiago stood in his way and instructed § 87(2)(b) to remain downstairs. § 87(2)(b) attempted to step around PO Santiago several times, and PO Santiago put out his hand to prevent § 87(2)(b) from passing. PO Santiago told § 87(2)(b) that he could be arrested for criminal trespass. It remains in dispute whether PO Santiago stopped § 87(2)(b) and whether his threat of arrest was justified.

§ 87(2)(b) testified that Sgt. Saleh told him he was not going upstairs and instructed PO Santiago to stay with him. As PO Santiago blocked § 87(2)(b) from advancing up the stairs, § 87(2)(b) asked if he was being detained or charged with anything. PO Santiago initially said no. PO Santiago asked if he had a right to be there, and § 87(2)(b) showed him the court order to prove his right to be in the building. § 87(2)(b) again asked if he was being detained or suspected of a crime, and PO1 told him that he could arrest him for criminal trespass.

PO Santiago's BWC as well as § 87(2)(b) recordings capture the entire incident (**Board Review 08, 04**). At 1:50 minutes into PO Santiago's recording, Sgt. Saleh instructs PO Santiago to stay with § 87(2)(b). At 2:16 minutes, PO Santiago stops before the stairwell and turns to face

§ 87(2)(b) attempts to pass, and PO Santiago blocks him and informs him he is not going upstairs. At 2:24 into the recording, § 87(2)(b) asks if he is being detained, and PO Santiago says no. § 87(2)(b) moves to pass him again, and PO Santiago blocks his movement by lifting his arm. At 2:25 PO Santiago asks if § 87(2)(b) is allowed in the building and if § 87(2)(b) lives there. § 87(2)(b) responds that he is allowed in the building. The two debate § 87(2)(b) right to be in the building. At 2:38, § 87(2)(b) asks if PO Santiago is detaining him, and PO Santiago replies, “Yes, yes I am. You can’t go anywhere.” § 87(2)(b) asks why and if he is suspected of a crime. At 2:51 into the recording, PO Santiago states he suspects § 87(2)(b) of criminal trespass. § 87(2)(b) again tries to pass PO Santiago, and at 3:09 PO Santiago informs “you’re going to wait here, you are not going to go upstairs” and remains in his path. Eventually the two men separate and wait downstairs without further discussion.

PO Yupa’s BWC shows that Sgt. Saleh spoke to the mother, who was not at home at the beginning of the incident, on the phone for the first time after PO Santiago stopped and threatened § 87(2)(b) with arrest (3:05 minutes into the recording, **Board Review 10**).

PO Santiago testified that Sgt. Saleh told PO Ragni and himself to make sure § 87(2)(b) stayed downstairs. PO Santiago then stood in front of the staircase to make sure § 87(2)(b) would not pass him. PO Santiago initially stated that § 87(2)(b) was never stopped in the sense that he was not free to go. He did not take any physical actions to prevent § 87(2)(b) from leaving. PO Santiago prevented § 87(2)(b) from going upstairs, but he did so because of the domestic dispute. In such instances, officers typically try to keep involved parties apart. PO Santiago was not seizing § 87(2)(b) person but rather preventing him from going upstairs. PO Santiago did not recall if he explained that distinction to § 87(2)(b). When Sgt. Saleh went upstairs, § 87(2)(b) became agitated, upset, and adversarial; he expressed this emotion verbally. § 87(2)(b) did not approach in a threatening way, did not gesticulate, was not physically aggressive, and did not get too close. PO Santiago never felt unsafe.

PO Santiago thought § 87(2)(b) could be arrested for criminal trespass because he did not have permission to be in the lobby. To avoid criminal trespass, one needs authority or permission to be at a location. Because the mother stated he did not have the authority to be there and pick up his child, there was no reason for him to be there. Sgt. Saleh communicated this information from the mother to PO Santiago, but PO Santiago did not recall how he received this information as he was downstairs and Sgt. Saleh was upstairs. PO Santiago never spoke to the mother. PO Santiago did not recall if he ever asked § 87(2)(b) to step outside the building. PO Santiago did not recall suspecting § 87(2)(b) of any criminality besides criminal trespass.

After reviewing the footage in which he told § 87(2)(b) that “yes” he was being detained, PO Santiago stated § 87(2)(b) was not actually being detained. PO Santiago only told him that because § 87(2)(b) was being so adversarial, and he had already explained things to § 87(2)(b) in many different ways. PO Santiago said § 87(2)(b) was being detained to satisfy § 87(2)(b) repeated questions and to communicate that if he continued acting the way he was, he would be arrested for criminal trespass. PO Santiago never physically detained § 87(2)(b). PO Santiago “never wanted to arrest the individual” § 87(2)(b). PO Santiago estimated he waited in the lobby with § 87(2)(b) for 20 to 25 minutes.

Sgt. Saleh testified that while he went upstairs, § 87(2)(b), PO Santiago, and PO Ragni waited in the lobby. Sgt. Saleh did not suspect § 87(2)(b) of any criminality. Sgt. Saleh did not believe any officer ever detained § 87(2)(b); he was simply waiting downstairs. Sgt. Saleh never instructed § 87(2)(b) that he was not free to go. Sgt. Saleh did not recall ever instructing

his officers to detain § 87(2)(b) Sgt. Saleh did not recall if the custody dispute involved orders of protection between § 87(2)(b) and the mother. Sgt. Saleh did not specifically know if § 87(2)(b) was allowed to come into the building, but he believed § 87(2)(b) was allowed inside since he spoke to him in the lobby.

Although PO Santiago stated that Sgt. Saleh informed him that the mother did not want § 87(2)(b) in the building, at this point in the encounter the mother was not yet on scene and Sgt. Saleh had only just arrived himself. Sgt. Saleh went upstairs at 2:17 in PO Santiago's recording, and PO Santiago told § 87(2)(b) he was being detained at 2:38. In the intervening 21 seconds recorded on BWC, Sgt. Saleh did not communicate any further information to PO Santiago. Furthermore, PO Yupa's BWC shows that Sgt. Saleh spoke to the mother on the phone for the first time only after PO Santiago's interaction with § 87(2)(b) (**Board Review 10**). The investigation therefore did not credit that PO Santiago received such information from Sgt. Saleh before stopping § 87(2)(b) and threatening him with arrest.

The court order of visitation § 87(2)(b) provided during the incident does not stipulate where or how § 87(2)(b) should pick up his child for the agreed-upon visitation (**Board Review 06-07**).

To determine whether a seizure of a person occurred in a street encounter, People v. Bora, 83 N.Y.2d 531 established the test of whether a reasonable person would have believed, under the circumstances, that the officer's conduct was a significant limitation on his or her freedom.

Although PO Santiago never physically detained § 87(2)(b) his unequivocal response to the question of whether he was detaining § 87(2)(b) —“Yes, yes I am. You can't go anywhere”—his further explanation of the crime of which he suspected § 87(2)(b) and his statement “you're going to wait here, you are not going to go upstairs” made the latter reasonably believe he was being detained. That PO Santiago “never wanted to arrest” § 87(2)(b) and believed he was not seizing § 87(2)(b) person but only preventing him from going upstairs is irrelevant because he did not communicate as much to § 87(2)(b) § 87(2)(g)

People v. DeBour, 1976 40 N.Y. 2d 210 (1976), found that in order to stop a person, a police officer must have reasonable suspicion that the person has committed, is committing, or is about to commit a crime (**Board Review 20**).

Per N.Y. Penal Law 140.10 a person is guilty of criminal trespass when they knowingly enter or remain unlawfully in a building or upon real property (**Board Review 18**).

Per People v. Brown, 25 N.Y.2d 374, when a person lawfully entered the premises, they are guilty of criminal trespass only when (1) a lawful order not to remain was personally communicated to the person and (2) they defied such a lawful order (**Board Review 17**).

§ 87(2)(b) believed his custody agreement permitted him to enter the building to retrieve his daughter. Sgt. Saleh testified that he believed § 87(2)(b) was allowed in the building. While PO Santiago later questioned § 87(2)(b) right to be in the building, that PO Santiago and PO Ragni allowed § 87(2)(b) to accompany them to the § 87(2)(b) floor of the building and later spoke to him in the lobby of the building indicates that they too believed him to have at least entered the building lawfully.

PO Santiago did not recall if he ever told § 87(2)(b) to leave the lobby, and BWC shows that

neither he nor any other person did so. As discussed above, whether the mother of his child revoked § 87(2)(b) permission to be in the building at any later point in the encounter is irrelevant because neither Sgt. Saleh nor the mother herself had informed PO Santiago of this by the time he stopped and threatened to arrest § 87(2)(b). Furthermore, PO Santiago did not personally communicate any lawful order not to remain to § 87(2)(b). § 87(2)(b) could not have defied an order that did not exist. PO Santiago did not provide any other reason he believed § 87(2)(b) was trespassing than that the mother did not want him there, and he further testified that he did not suspect § 87(2)(b) of any other criminal activity. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB to which § 87(2)(b) has been a party (**Board Review 22**)
- PO Santiago has been a member of service for fifteen years. He has been a subject in six prior CCRB complaints and twelve total allegations, one of which was substantiated.
 - In 201103968, a frisk allegation was substantiated, and PO Santiago received command level instruction.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate his complaint.
- As of January 22, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (**Board Review 19**).
- § 87(2)(g)

Squad No.: 15

Investigator:	<u>Emma Kaisla</u>	<u>Inv. Emma Kaisla</u>	<u>3/24/21</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Simon Wang</u>	<u>IM Simon Wang</u>	<u>03/23/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date